

*Application No. 09/683,249*  
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*Amendment*  
*Attorney Docket No. S63.2B-10014-US01*

### REMARKS

This Amendment is in response to the Final Office Action mailed August 19, 2003. The headings below correspond to the section under which the claims were rejected in the Office Action.

#### 102(e)

Claims 1-3, 5-9, 34, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6264687 to Tomonto (Tomonto). The final office action points to the 102(e) rejection presented in the office action mailed February 26, 2003.

Claims 1-3, 5-9, 34, and 35 require the presence of a balloon expandable portion and a self-expanding portion. The Office Action states that Tomonto discloses a stent having three balloon expandable, but not self-expanding segments, as shown in Figure 2. The Office Action further states there are two self-expanding segments located between the balloon expandable segments.

Applicant respectfully disagrees with this characterization of Tomonto. While Tomonto indicates the articulation portions are for the purpose of flexibility when navigating through tortuous paths and are flexible enough to flex with the balloon expandable portions, there is no disclosure that they in any way self-expand. The disclosure that the articulations portions are superelastic says nothing about whether the portions have been treated to have a shape memory for an expanded or unexpanded state. There is no teaching or suggestion in the disclosure that the articulation portions are used for anything other than flexibly linking more rigid portions. Thus, Tomonto does not have the required self-expanding portions necessary to sustain a 102(e) rejection.

Furthermore, if the articulations are inherently capable of self-expansion, one skilled in the art would expect any expansion of the articulation to increase the diameter of the stent. This is not the case in Tomonto. The articulation portions (80, 90) of Tomonto are attached at each end by balloon expandable portions. These balloon expandable portions require a force (e.g. a pressurized balloon) in order for them to expand. Without this force the balloon expandable portions remain in the same position, and thus the ends of the articulations remain in the same position. Hence, there is no self-expansion.

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If, for the sake of argument, the superelastic layer were capable of self-expansion, it would be unable to self-expand due to the additional stainless steel portions which require a force in order to expand. If these stainless steel portions were removed, the purpose of the stent would be defeated in that the stent possible lose its balloon expandable feature and the rigid nature of the cells would be lost.

Therefore the Tomonto reference fails to disclose the presence of a balloon expandable portion and a self-expanding portion as required by the claims.

In light of the above arguments, Applicant believes the 102(e) rejection is improper and respectfully request that the rejection of claims 1-3, 5-9, 34, and 35 be withdrawn.

### CONCLUSION

In light of the above, early notification that the pending claims are in condition for allowance is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: October 16, 2003

By: \_\_\_\_\_

  
Jonathan Grad  
Registration No.: 41,795

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001  
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